

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101

In the matter of:	)	
	)	
Water District Nos. 37 & 37M	)	
and	)	Docket No. CWA-10-2002-0139
Lee R. Peterson,	)	
	)	COMPLIANCE ORDER
Blaine County, IDAHO	)	
	)	
	)	
Respondents.	)	
	)	
_____	)	

The following FINDINGS AND CONCLUSIONS are made and ORDER issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by sections 308 and 309 of the Clean Water Act (“the Act”), 33 U.S.C. §§ 1318 and 1319. This authority has been delegated to the Regional Administrator, Region 10, and has been duly redelegated to the undersigned Director of the Office of Ecosystems and Communities.

**1. FINDINGS AND CONCLUSIONS**

1.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person, except as authorized by a permit issued pursuant to section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344. Each discharge of pollutants from a point

source that is not authorized by such a permit constitutes a violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

1.2. Water District Nos. 37 & 37M is a water district formed under the laws of the State of Idaho. Lee R. Peterson is the Water Master of Water District Nos. 37 & 37M. Both Water District Nos. 37 and 37M and Lee R. Peterson (“Respondents”) are “person(s)” within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).

1.3. Upon information and belief, in 2000, 2001 and 2002, and at times more fully known to Respondents, Respondents and/or persons acting on their behalf, discharged dredged material into wetlands and/or below the ordinary high water mark while reconstructing dikes along Silver Creek, located in S.20, T.2S., R.21E. near Carey, Blaine County, Idaho. During this time period, Respondents placed dredged and/or fill material into approximately 0.7 acres of wetlands. The reconstruction of the dikes resulted in the dewatering approximately 165 acres of wetlands adjacent to the dikes on both sides of Silver Creek.

1.4. The property described in paragraph 1.3 above contains wetlands. These wetlands and Silver Creek are “navigable waters” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

1.5. Upon information and belief, Respondents and/or persons acting on their behalf used heavy equipment to place the dredged and/or fill material into wetlands. The heavy equipment used to fill the wetlands is a “point source” within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).

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1.6. The fill material that Respondents and/or persons acting on their behalf caused to be discharged includes, among other things, dirt, spoil, rock, and sand, each of which constitutes a “pollutant” within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).

1.7. By causing such fill material to enter waters of the United States, Respondents have engaged, and are continuing to engage, in the “discharge of pollutants” from a point source within the meaning of sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

1.8. Respondents’ discharge(s) of fill material described in paragraph 1.3 above was not authorized by any permit issued pursuant to section 402 or 404 of the Act, 33 U.S.C. § 1312 or 1314, and Respondents are therefore in violation of section 301 of the Act, 33 U.S.C. § 1311.

1.9. Each day the material remains in the wetlands without the required permit or in violation of a permit, constitutes an additional day of violation of section 301 of the Act, 33 U.S.C. § 1311(a).

1.10. Taking into account the seriousness of this violation and all other relevant factors, the schedule for compliance contained in the following Order is reasonable and appropriate.

**2. ORDER**

Based upon the foregoing FINDINGS AND CONCLUSIONS, and pursuant to sections 308 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319(a), it is hereby ORDERED as follows:

2.1. Respondents shall complete all work pursuant to the attached Scope of Work For the Interim Measures of Restoration of Silver Creek and Adjacent Wetlands Located on the Simplot Property (Attachment 1) and in accordance with the following schedule:

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Action	Deadline
Respondents mark areas of unauthorized fill to be removed with flags, using the location map of Scope of Work For the Interim Measures (Attachment 1) as a guide for the areas to be restored	Prior to restoration work proceeding
Respondents complete removal and relocation of unauthorized earth fill and woody debris and informs EPA when work is complete for inspection and approval	November 1, 2002
EPA conducts inspection of fill removal	November 6, 2002
Respondents complete the Work Plan implementing Scope of Work For the Final Measures (Attachment 2) and submit it to EPA for review and approval	January 1, 2003
Respondents complete preparation of seedbed and application of seed and woody plants to the disturbed areas	November 1, 2003
Respondents submit First Year Monitoring Report	September 30, 2004
Respondents submit Second Year Monitoring Report	September 30, 2005
Respondents submit Third Year Monitoring Report	September 30, 2006
Respondents submit Fourth Year Monitoring Report	September 30, 2007
Respondents submit Final (Fifth Year) Monitoring Report*	September 30, 2008

\*Final report requirement is contingent upon Respondents' ability to meet the required performance standards.

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The Scope of Work is incorporated herein by reference and attached hereto as Attachment 1.

2.2. Respondents shall provide an annual status report to EPA no later than September 30, 2003, September 30, 2004, September 30, 2005, September 30, 2006, and September 30, 2007. By September 30, 2008, Respondents shall submit to EPA for review and approval a final report. Each report shall document the restoration activities and success of growth after each growing season.

2.3. Respondents shall provide and/or obtain access to the site and any off-site areas to which access is necessary to implement this Order and shall provide access to all records and documentation related to the conditions at the site and the restoration activities conducted pursuant to this Order. Such access shall be provided to EPA employees and/or their designated representatives. These individuals shall be permitted to move freely at the site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary.

2.5. Failure to timely and appropriately implement to EPA's satisfaction any element of the Restoration Plan shall be deemed a violation of this Order.

2.6. EPA encourages Respondents to engage in informal discussion of the terms and requirements of this Order upon receipt. Such discussions should address any allegations herein which Respondents believe to be inaccurate or requirements which may not be attainable and the reasons therefore. Alternative methods to attain the objectives of this Order may be proposed. If acceptable to EPA, such proposals may be incorporated into amendments to this Order, at the discretion of EPA.

2.7. All submissions required by this Order shall be sent to:

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Carla Fromm  
U.S. EPA, Idaho Operations Office  
1435 North Orchard Street  
Boise, ID 83706  
Phone: (208) 378-5755  
Fax: (208) 378-5744.

2.8. This Order shall become effective on the date it is signed.

**3. SANCTIONS**

3.1. Notice is hereby given that violation of, or failure to comply with, the foregoing Order may subject Respondents to (1) civil penalties of up to \$27,500 per day of violation pursuant to section 309(d) of the Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19; or (2) administrative penalties of up to \$11,000 per day for each violation, pursuant to section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19.

3.2. Nothing in this Order shall be construed to relieve Respondents of any applicable requirements of federal, state, or local law. EPA reserves the right to take enforcement action as authorized by law for any violation of this Order, and for any future or past violation of any permit issued pursuant to the Act or of any other applicable legal requirements, including, but not limited to, the violations identified in Part I of this Order.

Dated this \_\_\_\_ day of October, 2002

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ELBERT MOORE, Director  
Office of Ecosystems and Communities

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